

**Agenda Item: 7-4**  
**Meeting Dates: April 7 and 8, 2004**  
**Revised: April 2, 2004**

## **DIRECTOR'S REPORT**

### **Budget**

The California Bay-Delta Authority's proposed budget will be heard by the Assembly Budget Subcommittee on Natural Resources and Environmental Quality on April 14, 2004, and the Senate Budget Subcommittee on Resources, Environmental Protection, Public Safety and Energy on April 29, 2004. It is anticipated that the Governor will release proposals for Propositions 204, 13 and 50 bond funding sometime in April.

### **Legislation**

The Senate Agriculture and Water Resources Committee cancelled the March 16, 2004 hearing in which SB 1155 (Machado) was scheduled to be considered. ~~A new hearing date has not yet been scheduled; however, there will be~~ There was a special order of business at the March 30, 2004 hearing in which DWR Director Lester Snow provided ~~will provide~~ an update on efforts to reduce Delta conflicts. SB 1155 has been scheduled for hearing on April 20, 2004.

SB 1155, as introduced, would prohibit additional water pumping from the Sacramento-San Joaquin Delta until all water quality standards and objectives are met and additional elements called for in the CALFED Programmatic Record of Decision (ROD) are completed.

While Authority staff continues working on the proposal for implementing Water Use Measurement, three bills on the subject have been introduced:

AB 2298 (Plescia), as amended March 22, 2004, would require, by January 1, 2006, public water systems serving 3,000 or more service connections to require water meters to measure the volume of water delivered to specified new irrigated landscaped areas and rehabilitated irrigated landscaped areas. This bill would also require water meters for irrigated landscaped areas of one acre or more no later than January 1, 2012. Water customers would be charged based on the actual volume of

deliveries. This bill, sponsored by the California Landscape Contractors and the Natural Resources Defense Council, ~~failed passage in~~ passed the Assembly Water Parks and Wildlife Committee on March 23, 2004 and was re-referred to the Assembly Business and Professions Committee.

AB 2572 (Kehoe), as introduced, would require urban water suppliers to install water meters on all service connections constructed before January 1, 1992. This bill would also require customers that have water meters to be charged based on the actual volume of deliveries. This bill is sponsored by the Natural Resources Defense Council and the San Diego Water Authority.

AB 2951 (Canciamilla), as introduced, would declare that it is the intent of the Legislature to define appropriate measurement for agricultural uses of water in accordance with the ROD and the findings of the independent panel. This bill is sponsored by the Northern California Water Association.

## California Bay-Delta Program EIS/EIR Litigation Update (March 2004)

### A. Federal Case

***Laub v. Babbitt, et al.***, U.S. District Court, Fresno

Plaintiffs: The California Farm Bureau Federation and several individual farmers

Defendants: All Federal and State agencies participating in the Program. The State agencies recently named in the Farm Bureau's latest complaint are sued via their executive officers: Governor Schwarzenegger, Michael Chrisman (Resources), Terry Tamminen (CalEPA), Celeste Cantu (SWRCB), Lester Snow (DWR), Ryan Broddrick (DFG), Peter Rabbon (The Reclamation Board), Margit Aramburu (Delta Protection Commission), Darryl Young (Conservation), Will Travis (Bay Conservation and Development Commission), Sandra Shewry (Health Services), and A.G. Kawamura (Food and Agriculture)

Summary of Case: The Farm Bureau filed this case in September 2000. It alleges that the CALFED Programmatic EIS/EIR ("PEIS/EIR") violates NEPA and the Administrative Procedures Act. They seek an injunction against all State and Federal actions to implement the Record of Decision until an adequate PEIS/EIR is prepared. The State defendants are apparently being sued under the theory that the Program is a joint, Federal-State partnership that requires NEPA compliance under Federal law, and therefore the Federal government must comply with NEPA for all State projects, as well as Federal projects. The Farm Bureau alleged that the PEIS/EIR violated NEPA by improperly analyzing impacts to agricultural land and water and failed to contain an adequate alternatives analysis or mitigation measures to reduce impacts on agricultural land and water. The Farm Bureau also alleged other violations of NEPA, such as the claim that the June 9, 2000, policy document called the Framework for Action contained "significant new information" regarding the integrated storage investigation and the EWA that required defendants to recirculate the PEIS/EIR.

Current Status: The case is pending in the Federal district court. The district court dismissed an earlier version of the complaint as premature in August 2001. The Court of Appeals reversed that decision in September 2003. The Farm Bureau recently amended its complaint and an answer from all State defendants was filed on February 2, 2004. At a status conference held on

**Agenda Item: 7-4**  
**Meeting Date: April 7 and 8, 2004**  
**Revised: April 2, 2004**  
**Page 4**

January 20, 2004, a deadline of August 27, 2004, was set for the Federal defendants to file the administrative record. Discovery will be suspended until the record is filed. A subsequent status conference is scheduled for November 1, 2004, to determine how the case will proceed.

## **B. State Court Cases**

***Laub v. Schwarzenegger, et al.***, Court of Appeal, Third Appellate District (Sacramento)

Appellants/Plaintiffs: The California Farm Bureau Federation and several individual farmers

Respondents/Defendants: Governor Schwarzenegger, Resources Agency, Secretary of Resources Chrisman, CalEPA, CalEPA Secretary Tamminen

Summary of Case: The Farm Bureau filed this case in State court after the Federal district court dismissed a CEQA claim that had been part of their original NEPA lawsuit (described above). The Farm Bureau alleged that the PEIS/EIR violated CEQA by improperly analyzing impacts to agricultural land and water and failed to contain an adequate alternatives analysis or mitigation measures to reduce impacts on agricultural land and water. The Farm Bureau also alleged other violations of CEQA, such as the claim that the June 9, 2000, policy document called the Framework for Action contained "significant new information" regarding the integrated storage investigation and the EWA that required defendants to recirculate the PEIS/EIR.

Current Status: Defendants won on all issues in the trial court and the Farm Bureau appealed. That appeal has been consolidated with an appeal of the trial court's CEQA ruling, which was made jointly in Regional Council of Rural Counties (described below). On January 13, 2004, the Farm Bureau filed a brief seeking to overturn the Superior Court's ruling. The State's appellate briefs are due April 5, 2004. Response briefs will be due 30 days thereafter, subject to extension.

***Regional Council of Rural Counties v. State, et al.***, Court of Appeal, Third Appellate District (Sacramento)

Appellants/Petitioners: Regional Council of Rural Counties, Central Delta Water Agency, South Delta Water Agency, Zuckerman-Mandeville, Inc., and individual farmers

Respondents/Defendants: State of California, the Resources Agency, Secretary of Resources, CalEPA, CalEPA Secretary (plus real parties in interest Department of Water Resources, DWR Director, Patrick Wright (as

Director of the CALFED Bay-Delta Program), DFG, the Director of DFG, and numerous Federal agencies and officers)

Summary of Case: Petitioners jointly filed this suit in Sacramento Superior Court and it was coordinated with Laub v. Davis (see above), and the two cases have been consolidated on appeal. Petitioners argue that the PEIS/EIR violated CEQA by, among other things, conducting an inadequate alternatives analysis, etc., relating to water supply and water quality issues in the Delta and watershed areas. Petitioners contend the ROD contained various new changes to water rights and water supply commitments that required recirculation of the PEIS/EIR. Petitioners also brought non-CEQA claims, contending that these provisions (as well as expenditures under the ROD) violated varied provisions of the Water Code.

Current Status: Defendants won on all issues in the trial court and petitioners appealed. On January 15, 2004, petitioners filed two briefs (one by RCRC and one for all other petitioners) seeking to overturn various rulings by the Superior Court. The State's appellate briefs are due April 5, 2004. Response briefs will be due 30 days thereafter, subject to extension.

***Municipal Water District of Orange County v. California Resources Agency, et al.***, (dismissed from Los Angeles Superior Court)

Petitioner: Municipal Water District of Orange County

Defendant: California Resources Agency (plus real parties in interest CalEPA, Department of Fish and Game, Department of Water Resources, State Water Resources Control Board, Department of Food and Agriculture, Delta Protection Commission, and The Reclamation Board)

Summary of Case: Petitioner alleged that the CALFED PEIR violates CEQA because it fails to include the June 9, 2000, policy document called the Framework for Action, failed to analyze significant environmental effects of the Program, and failed to discuss mitigation measures concerning water supply reliability and water quality for Delta exports to Southern California. Petitioners seek a judicial declaration that the Framework for Action is part of the CALFED preferred program alternative.

Status: This action was dismissed in 2001 pursuant to a settlement agreement reciting the contents of the ROD, the actions that defendants had taken and

**Agenda Item: 7-4**  
**Meeting Date: April 7 and 8, 2004**  
**Revised: April 2, 2004**  
**Page 7**

planned to take as of 2001 pursuant to the ROD related to scientific understanding on issues such as the interplay between Delta exports and certain listed fish species, and an agreement to give MWDOC notice of all stakeholder meetings.